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VOLUME III

ALTERNATIVE APPROACHES TO LEGAL SCHOLARSHIP

PROFESSORS TREBILCOCK AND ZIEGEL

1986-87

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Introductory Note

I shall have two objectives in my talks. The first is to talk about the enterprise of doing legal history generally: what might any legal historian think he or she is trying to do, and what do I think I am trying to do. The second is to talk about a "real" topic: Canadian legal thought from about 1890 to 1940. This second objective will be undertaken primarily as an example of the first objective (what am I trying to do), but I shall also talk about it as interesting in itself - it is an "approach" to understanding our minds.

The first two readings - Gordon and Skinner - are about the enterprise, and especially about "intellectual" history (although watch Gordon's scorn of functionalism). The third reading - Sugarman - is a wonderful study of the English legal mind in the late nineteenth century and the making of the "black-letter tradition, and I assume you can see some traces of this tradition around the law school. The fourth and fifth readings - Lefroy - are writing about the common law by a Canadian around the turn of the century, and I shall talk about my thoughts about to read and understand him, and about the nature of Canadian legal thought.

The next two readings - Purcell and White - are about legal thought in the United States in the early twentieth centruy, and they are a background for the last three - Wright, Corry, and Willis, who are all Canadians. Again, I shall talk about how to read and understand, and especially about the nature of Canadian legal thought. One theme will be the legal mind, and especially the law school, as colony - first a colony of England and then a colony of the United States, and another theme will a reconstruction of our minds - as including two major and unintegrated strands - the black letter tradion and American legal thought.

Alternative Approaches to Legal Scholarship – Vol. 3

Michael J. Trebilcock

1986-87

1. Quentin Skinner, "Meaning and Understanding in the History of Ideas" (1969) 8(1) History and Theory 3.
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2. Robert W Gordon, "Legal Thought and Legal Practice in the Age of American Enterprise" in GL Geison, ed, *Professions and Professional Ideologies in America* (Chapel Hill: University of North Carolina Press, 1984).
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3. D Sugarman, "Legal Theory, the Common Law Mind and the Making of the Textbook Tradition" from W Twining, ed, *Legal Theory and Common Law* (Oxford: Blackwell, 1986) 26.
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4. Augustus Henry Frazer Lefroy, "The Basis of Case Law" (1906) 22 LQR 293.
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5. Augustus Henry Frazer Lefroy, "Judge Made Law" (1904) 20 LQR 399.
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6. Edward A Purcell Jr, *The Crisis of Democratic Theory* (Lexington, KY: University Press of Kentucky, 1973) 257-262.
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7. G Edward White "From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America" (1972) 58:6 Va L Rev 999.
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8. Cecil A Wright, "An Extra Legal Approach to Law" (1932) 10 Can Bar Rev 1.
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9. Corry, "Administrative Law and the Interpretation of Statutes" (1936) 1 UTLJ 286.
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10. J Willis, "Three Approaches to Administrative Law" (1935) 1 UTLJ 53.
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